

**C & O Mining Corporation and District 29, United Mine Workers of America.** Case 9-CA-26368

April 1, 1992

**SUPPLEMENTAL DECISION AND ORDER**

BY CHAIRMAN STEPHENS AND DEVANEY AND  
RAUDABAUGH

On September 29, 1989, the National Labor Relations Board issued a Decision and Order in this proceeding<sup>1</sup> directing the Respondent to, inter alia, make whole all the bargaining unit employees working in or about the Respondent's Keystone, McDowell County, West Virginia mine for any loss of earnings or benefits suffered as a result of the Respondent's failure since November 22, 1988, to adhere to the terms of the collective-bargaining agreement between the parties, in violation of Section 8(a)(1) and (5) of the National Labor Relations Act. On June 29, 1990, the United States Court of Appeals for the Fourth Circuit enforced the Board's Order.

A controversy having arisen over the amounts due under the terms of the Board's Order, the Acting Regional Director for Region 9 issued a compliance specification and notice of hearing on September 26, 1991. The Respondent filed an answer to the compliance specification.

On January 22, 1992, counsel for the General Counsel filed with the Board a Motion for Summary Judgment and Memorandum in Support. Counsel for the General Counsel contends that the Respondent's answer fails to comport with the requirements of specificity and particularized pleadings within the meaning of Section 102.56(b) and (c) of the Board's Rules and Regulations. Counsel for the General Counsel requests that the Board: (1) grant the Motion for Summary Judgment; (2) strike the defenses raised in the Respondent's answer; (3) find all the allegations in the compliance specification to be true; and (4) issue a decision including findings of fact and conclusions of law and an appropriate backpay order.

On January 28, 1992, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the General Counsel's motion should not be granted. The Respondent did not file a response to the Notice to Show Cause.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Summary Judgment**

In its answer to the compliance specification the Respondent contends that it lacked sufficient time to determine if the computations with relation to backpay

and related matters as set forth in the compliance specification were accurate and the pay periods and amounts correct. The Respondent contends that it has not had adequate time to confirm the backpay and benefits claim as calculated by the West Virginia Department of Labor, Wage and Hour Division,<sup>2</sup> and requests that the background information be provided in order to make the required calculations and reach a conclusion regarding the truthfulness of the allegations.

Section 102.56(b) and (c) of the Board's Rules and Regulations states in pertinent part:

(b) . . . As to all matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial shall not suffice. As to such matters, if the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, [he] shall specifically state the basis for such disagreement, setting forth in detail the respondent's position as to the applicable premises and furnishing the appropriate supporting figures.

(c) . . . If the respondent files an answer to the specification but fails to deny any allegation of the specification in the manner required by paragraph (b) of this section, and the failure to deny is not adequately explained, such allegation shall be deemed to be admitted to be true, and may be so found by the Board without the taking of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting the allegation.

The Respondent's answer to the compliance specification fails to meet the requirements of Section 102.56(b) and (c) of the Board's Rules and Regulations. The Respondent's answer fails to specifically deny or explain any of the allegations in the compliance specification. The Respondent limits itself to alleging that it has not had sufficient time to obtain information to confirm the benefits as calculated by the West Virginia Department of Labor, and requests that the background information be provided in order to make the required calculations. However, the Respondent has knowledge of the provisions of the collective-bargaining agreement and has not offered information which might in any way contravene or dispute the allegations in the compliance specification. Nor has it explained why it has not had sufficient time to respond. The Respondent has failed to present an alternative backpay plan based on the provisions of said agree-

<sup>2</sup>The General Counsel states in the backpay specification that his calculations are based on information obtained by the West Virginia Department of Labor, Wage and Hour Division which has disbursed partial wage and medical benefits to the Respondent's employees pursuant to a wage bond. Additional information was also obtained from the Charging Party.

<sup>1</sup>296 NLRB No. 114 (not reported in Board volumes).

ment. In view of the Respondent's failure to specifically state the basis for its disagreement with the allegations contained in the specification we accept those allegations as true. Accordingly, we grant the General Counsel's Motion for Summary Judgment,<sup>3</sup> and conclude that the total amounts due are as stated in the compliance specification and we shall order payment of said amounts by the Respondent.

#### ORDER

The National Labor Relations Board orders that the Respondent, C & O Mining Corporation, Keystone, West Virginia, its officers, agents, successors, and assigns, shall make whole the discriminatees named below by paying the amounts following their names, plus interest accrued to the date as prescribed by *New*

<sup>3</sup> In light of this disposition, we find it unnecessary to pass on the General Counsel's motion to strike the Respondent's answer.

*Horizons for the Retarded*,<sup>4</sup> minus tax withholdings required by Federal and state laws.

#### NET BACKPAY

<i>Name</i>	<i>(Fringe Ben- efits)</i>	<i>Medical Ben- efits</i>	<i>Total</i>
Johnny Brown	\$2,089.65	\$ 371.51	\$2,461.16
David Denton	1,673.55	67.17	1,740.72
David Hagerman	554.36	249.50	803.86
Harlin Hagerman	563.55	- 0 -	563.55
Robert E. Hill	700.51	- 0 -	700.51
Steven A. O'del	1,241.34	4,483.69	5,725.03
Bernard Simpson	1,734.34	- 0 -	1,734.34
Ira Simpson	1,771.53	- 0 -	1,771.53
Claude Smith	1,241.34	- 0 -	1,241.34
Anthony Taylor	1,711.84	76.00	1,787.84
<b>Total:</b>			<b>\$18,529.88</b>

<sup>4</sup> 283 NLRB 1173 (1987).